

United States District Court  
Eastern District of California

David Wayne Elmore,

Plaintiff,

vs.

Tom L. Carey, et al.,

Defendants.

No. Civ. S 04-2657 GEB PAN P

Order

-oOo-

October 14, 2005, plaintiff filed a motion to amend the complaint and amended complaint. Plaintiff may amend once as of right where no defendant has served an answer. Plaintiff's amended complaint does not attach the proof of service required by Fed. R. Civ. P. 5 and Local Rule 5-135, showing it was served on Traquina, the sole defendant who has been served and appeared. Plaintiff shall file a proof of service within ten days.

The amended complaint states cognizable claims for relief against all defendants pursuant to 42 U.S.C. § 1983 and 28 U.S.C.

1 § 1915A(b) .

2 Accordingly, the court hereby orders that:

3 1. The amended complaint is appropriate for service on  
4 defendants Carey, Hooper, Borges, Wedell, Turella, Naku, Rohrer,  
5 Kofoed, Noriega, Solomon and Franklin.

6 2. Plaintiff submitted USM-285 forms and a summons for  
7 serving these defendants and the court still has those materials.  
8 The Clerk of the Court shall send plaintiff a copy of the October  
9 14, 2005, amended complaint.

10 3. Within 30 days from service of this order, plaintiff  
11 shall complete the attached Notice of Submission of Documents and  
12 submit it to the court with twelve copies of the October 14,  
13 2005, amended complaint.

14 4. Upon receipt of the necessary copies of the amended  
15 complaint, the court will direct the United States Marshal to  
16 serve defendants Carey, Hooper, Borges, Wedell, Turella, Naku,  
17 Rohrer, Kofoed, Noriega, Solomon and Franklin pursuant to Federal  
18 Rule of Civil Procedure 4 without payment of costs.

19 5. Defendant Traquina shall respond to the amended pleading  
20 within 20 days after plaintiff serves it upon him by mailing a  
21 copy to Traquina's attorney.

22 Dated: February 2, 2006.

23 /s/ Peter A. Nowinski  
24 PETER A. NOWINSKI  
25 Magistrate Judge  
26

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Notice of Submission of Documents

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Plaintiff hereby submits the following documents in  
compliance with the court's order filed \_\_\_\_\_:

\_\_\_\_\_ completed summons form

\_\_\_\_\_ completed forms USM-285

\_\_\_\_\_ copies of the \_\_\_\_\_  
Amended Complaint

Dated: \_\_\_\_\_

\_\_\_\_\_  
Plaintiff